IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Arbitration PetitionNo. 137 of 2007

M/s Nobel Film Distributors ..Petitioners

vs.

Mr.Vijay Galani ..Respondent

Ms.Mamta Shah for petitioners
Mr.R.U.Singh for respondent.

**CORAM: S.C.DHARMADHIKARI J.**
**31st August, 2007**

**P.C.**

1. Heard the learned Counsel appearing for the parties.

2. The petitioners have filed this petition under sec.9 of the Arbitration and Conciliation Act, 1996.

3. The request is that this Court should pass appropriate orders so that the execution and implementation of the Award made in their favour would be effective and smooth. The apprehension is that if the interim orders are not passed, it will not be possible to execute the award.

4. It is well settled that the award is enforceable as a decree of the civil court. It is not disputed before me

that certain rights were created in favour of the petitioners under the agreement, copy of which is at Exh.A.

5. The parties unconditionally agreed and undertook to refer for adjudication any disputes or differences with regard to the said agreement to the executive Committee of the Indian Motion Pictures Distributors Association (IMPDA for short) or any sub committee or Tribunal or Board of Administrators that may be appointed by the Executive Committee in this aspect.

6. It is not disputed that certain disputes and differences arose between the parties and the petitioner lodged its claim against the respondents in the sum of Rs.90,60,080.98. That was towards the entire short fall advance amount with regard to the motion picture.

7. IMPDA after giving the parties opportunity to put forward their respective cases through its Sub Committee made the award, a copy of which is at Exh.K to the petition.

8. The award records that the producer has accepted the claim of the distributors namely the respondent had

accepted the claim of the petitioners and entered into mutual settlement. The claim was scaled down to Rs.67,50,000/- The commitment was fulfilled in part but thereafter defaults were committed. In such circumstances, award was made in the sum of Rs.50,00,000/- payable towards the balance unrecouped advance in instalments from 31st March, 2006.

9. The award is thus capable of being executed. However, the jurisdiction of this Court is invoked on the basis that pending enforcement of the Award only immovable property which is belonging to the respondent deserves to be protected and preserved failing which the ptitioners would be put to great loss, irreparable harm and injury.

10. When this petition was placed before this Court at the request of the respondents' Advocate time was granted to file the affidavit in reply. The reply affidavit does not dispute making of the award and fact that challenge to the same laid in Arbitration Petition No.145 of 2007 being rejected. However, in sofar as the flat/immovable property is concerned, the contention is that it does not belong to the respondent but to his father. The father is the member of the society. The argument is thus that there is a third party claim towards the immovable

property/flat. It has also been contended that the flat was initially beloning to mother Sheela K.Galani. It is contended that the society certificate denotes that the flat is in possession of and belongs to the father of the respondent. Therefore, it is contended that the respondent's father is in possession of the flat as a lawful member and is occupying the same in his own right. Therefore, no order can be passed with regard to the same.

11. The learned Advocate appearing for the petitioners on the other hand submits that respondent is carrying on business. He is still trading in the same name and style. The market sources have informed the petitioners that the respondent is carrying on business and his plea that he has no funds is, therefore, not bonafide. Having perused the petition and annexures thereto, so also the subject award, I am of the view that the respondent cannot deny his liability. In this behalf, a reference can be made to the communication to the society on behalf of the respondent, a copy of which is at annexure H to this petition. The same reads thus:

" FILM FOLKS
6B-1, Juhu Sangeeta Apts. Behind Lido Cinema
Juhu, Santacruz (W), Mumbai 400 049

Dated 10th June, 2005

To:

The Indian Motion Pictures Distributors
Association ,
No.33/38, 1st floor,
Vijay Chambers, Tribhuvan Road,
Mumbai 400 004.

Ref: M/s Noble Film Distributors, Mumbai.

Dear Sir,

This is to put on record as per the arrangement letter sent to you dated 13th November, 2004, between us and Noble Film Distributors towards the refund of advance amount of our picture "BARDASHT" for Bombay Circuit.

It was agreed by us to pay a sum of Rs.17,50,000/- (Rupees Seventeen lakhs only) before release of our picture "Bach Ke Rehna Re Baba".

fpWe are hereby enclosing a Demand Draft of Rs.17,50,000/- (Rupees Seventeen Lakhs only) dated 11th June, 2005 in your favour, which please accept and acknowledge.

Thanking you,

For Film Folks
Sd/-
Proprietor.

12. Mr.Singh, learned Counsel appearing for the respondents, would urge that the respondent is desirous of paying the balance sum but presently has no funds. Therefore, he submits that the petition be dismissed. Mr.Singh does not dispute that liability as of today is Rs.50,00,000/-.

13. In the above circumstances, interest of justice would be subserved if the following order is passed.

. Till the respondent paying the balance sum under the subject award, within a period of six months in equal instalments, the respondent, his servants, agents and persons claiming through or under him including his family

members not to alienate the flat more particularly described in prayer clause (b) of the petition. In default of payment of the said sum, the petitioners would be entitled to apply for appointment of the Court Receiver or such other interim measures as are permissible in law.

. Needless to state that in addition to the execution and enforcement of the award, if the respondent disobeys the directions as above, the petitioner would be at liberty to initiate proceedings for breach of the order passed and directions issued by this Court, under the Contempt of Courts Act, 1971 and the respondent would be dealt with accordingly.

. The petition is disposed of accordingly.

**(S.C.DHARMADHIKARI J.)**